IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

U.O.I. **VS.** M/s Grasim Industries Ltd. & Anr.

D.B. CENTRAL EXCISE APPEAL NO.8/2006
against the final order dt.22.1.2004 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi.

Date of judgment : 12th October, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HONBLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Ravi Bhansali for the appellant.
Mr. Rajendra Mehta for the respondent.

BY THE COURT:(PER HON'BLE RAJESH BALIA, J.)

This appeal is directed under Section 35 H of the Central Excise Act, 1944 against the order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi dated 22nd January, 2004 allowing the appeal filed by the respondent manufacturer about its claim to avail cenvat credit in respect of rope asbestos and graphite asbestos classified under sub head 6805.90

and wire rope is classified under sub-head 7312.10 under the Tariff Act.

The following substantial question of law was framed at the time of admitting the appeal:-

> "Whether rope asbestos and graphite asbestos used by the manufacturer for sealing the holes in their plant and machinery are covered under the definition of Capital goods in terms of Rule 2(b) of the erstwhile Cenvat Credit Rules, 2001 and, therefore, the credit was admissible or not on such rope asbestos and graphite asbestos under rule 3 of the Cenvat Credit Rules, 2001."

The assessee has availed cenvat credit in respect of the aforesaid two items considering it to be the capital goods and accessories used in the manufacturing of cement at its manufacturing plant for the period between August 2001 to May 2002 and April 2000 to December 2000.

The Dy. Commissioner, Central Excise vide his order dated 22nd June, 2001 held in respect of Rope asbestos/graphite asbestos that these are neither

components nor spares nor accessories to any plant and machinery and in respect of wire rope, it was held by the Dy. Commissioner that it cannot be considered as component spare of hoist, hence, the modvat / cenvat credit availed by the respondent manufacturer during the aforesaid period was disallowed and penalty was also imposed under Rule 17 of the Cenvat Rules amounting to Rs.2,000/-.

The Commissioner (Appeals) vide his order dated 30th April, 2003 partly allowed the appeal while upholding the assessee's claim to cenvat credit in respect of wire ropes used in its packing department as a hoist for removing the packing material from ground level to machines. However, claim to cenvat credit in respect of asbestos/graphite asbestos was disallowed affirming the order of the Dy. Commissioner in that regard.

On further appeal, the Tribunal vide its order under appeal has allowed the assessee's claim in respect of rope asbestos also. The Tribunal has found that for

subsequent period the Commissioner (Appeals) has allowed modvat credit on the very goods and in view thereof the cenvat credit availed earlier was held to be not valid.

The learned counsel for the appellant was not in a position to say whether any appeal was preferred against the order of Commissioner (Appeals) allowing the respondent to avail cenvat credit in respect of both the items as capital goods considering them to be accessories of the main plant. The leaned counsel for the respondent positively asserted that it has not received any notice so far that any appeal has been filed against the order of the Commissioner.

He also placed reliance on a Bench decision of this Court in 2006(3) WLC (Raj.)335 the Union of India Vs. M/s Aditya Cement & Anr. considering and interpreting the term “accessories” included in the definition of capital goods to be considered as a part of capital goods. Considering the object and purpose of the expression “used in the manufacturing of final

product" in the light of Supreme Court decision rendered in Commissioner of C.Ex., Coimbator Vs. Jawahar Mills Ltd., 2001 (132) E.L.T. 3 (SC) page 3 and also the Bench decision of Bombay High Court in Precision Rubber Industries Vs. Collector of Central Excise, 1990 (49) ELT 170 (Bom.) it was held as under:-

> "Obviously, the accessories which have not directly been involved with the primary function of machine of which it is an accessory that is to say direct involvement in the primary functioning of machine is not the necessary requirement of capital goods to be eligible for modvat credit if it falls within clauses (b), (c) or (d) of Explanation 1. It may be assumed that for the purpose of clause (a) such machines which are primarily involved in manufacturing are included in the capital goods but if we come to clause (b) which includes components, spare parts and accessories to such machines appliance its tools etc. which are enumerated in clause (a) and which are used for the purpose of manufacturing mentioned in clause (b) that accessories of machine must be of such machines which are used in manufacturing and processing of the goods or are used for

> making change in the goods. It cannot be gainsaid that where there is a plant and machinery with which activity of manufacturing is going on, the principal plant and machinery suffers wear and tear in the course of its operation and requires regular back up through proper up-keep and normal maintenance for which the supplementary and subordinate machinery are required to be kept at site."

In the present case on facts it is not a disputed issue that the rope asbestos/graphite asbestos are used for sealing and flag / joint/ducts/ chutes etc. in all cement manufacturing machinery and part of its maintenance requirement for smooth and efficient running of the machinery and other items namely wire rope is used as a hoist in raw mill, cement mill for loading/unloading of grinding media in the mill. The hoist is used in packing plant for shifting of packing material from ground floor to packing section.

Apparently all the activities being essential part for completing the manufacture, the machines used

in that respect cannot be termed as capital goods not used in manufacture of the product.

Accordingly, we do not find any merit in this appeal. The same is hereby dismissed. No order as to costs.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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